

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

JERRY N. JONES, MARY FRANCES)	
JONES, and OLGA MENYHART,)	
)	04-4184-CV-C-NKL
Plaintiffs,)	
)	
vs.)	
)	
HARRIS ASSOCIATES L.P.,)	
)	
Defendant.)	
_____)	

DEFENDANT'S MOTION TO DISMISS

Defendant Harris Associates L.P. ("Harris") hereby moves for an entry of an order dismissing this action for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). As set forth more fully in the suggestions in support submitted herewith, Harris respectfully submits that this action should be dismissed because although the plaintiffs purport to bring this action pursuant to Section 36(b) of the Investment Company Act of 1940 ("ICA"), 15 U.S.C. §§ 80a-35(b), the plaintiffs fail to allege facts that, if true, would support a cognizable claim under this section.

In the alternative, Harris moves for an order dismissing Count II in its entirety and striking the plaintiffs' prayer for relief that the advisory agreements be declared *void ab initio*. Count II should be stricken because it asserts a theory of liability that does not exist under Section 36(b) of the ICA. Plaintiffs' prayer for relief seeking an order declaring the advisory agreements between the Funds and Harris "void ab initio" should also be stricken because it seeks a remedy beyond the what is provided by the statute. *See* 15 U.S.C. §§ 80a-35(b).

WHEREFORE, Harris respectfully requests that this Court enter an order dismissing this action in its entirety, or, in the alternative, dismissing Count II of the complaint and striking the prayer for relief seeking an order declaring the advisory agreements *void ab initio*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 1, 2004, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following:

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I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

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